

REMARKS

By this amendment, claims 1-30 are pending, in which claims 2, 7, 12, 17, 22, and 27 are currently amended. No new matter is introduced.

The Office Action mailed October 6, 2004 rejected claims 1, 5, 6, 10, 11, 15, 16, 20, 21, 24-26, 29 and 30 under 35 U.S.C. § 102 as anticipated by *Bergman et al.* (US 20030128691), and claims 2-4, 7-9, 12-14, 17-19, 22-23, and 27-28 as obvious under 35 U.S.C. § 103 in view of *Bergman et al.*

Applicants respectfully traverse the rejections under 35 U.S.C. §§ 102 and 103 as the applied art fails to anticipate or make obvious the many features of the pending claims. For example, independent claims 1 and 6 recite “instructing, in response to the query, the switch to terminate the call without incurring a local access charge for the call assessable by a local carrier capable of terminating the call.” Independent claims 11 and 16 recite “receiving the call destined for a station directly reachable by the interexchange carrier network” and “receiving a response to the query from the call processor, the response containing the routing information for selectively bypassing a local exchange carrier network serving the station.” Independent claims 21 and 26 recite “storing the alternative route among a plurality of alternative routes associated with the LNP call, the alternative route specifying bypass of a local exchange network capable of terminating the call.”

In support of the anticipation rejection, the Office Action refers to various passages within *Bergman et al.* for a supposed teaching of the above features: FIG. 13-14, and paragraphs [0099], [0023] and [0131]. It appears that the Examiner has misunderstood the claimed invention, which relates to terminating a “call without incurring a **local access charge** for the call assessable by a local carrier capable of terminating the call” or “bypassing a local exchange carrier network.” However, the Examiner relies on *Bergman et al.* for a description of avoiding

long-distance trunk charges (as found in paragraphs [0023] and [0031]). Applicants do not dispute such teachings, but submit that they bear no relevance to the claimed features.

Bergman et al. discloses, per the Abstract, a method for public access to private phone numbers and other telephonic peripherals using a caller access code in which a caller places a telephone call and enters an access code when calling a subscriber. In paragraphs [0097]-[0099], *Bergman et al.* does discuss, in general terms, Local Number Portability with respect to the use of Local Routing Number (LRN) to route calls, without any mention of avoiding “local access charges” or “bypassing a local exchange carrier network.”

Moreover, Applicants’ Specification states that conventionally LNP calls are processed using LRNs (paragraph [03]). In fact, Applicants recognized that “given the traditional approach for supporting LNP, local access fees are incurred by a long distance service provider (or interexchange carrier) when the calls are terminated to the LECs.”

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a prior art reference, based on the foregoing discussions, it is clear that *Bergman et al.* fails to anticipate claims 1, 5, 6, 10, 11, 15, 16, 20, 21, 24-26, 29 and 30.

Further, Applicants respectfully submit that the rejection violates 35 U.S.C. § 132, which requires the Director to “notify the applicant thereof, stating the reasons for such rejection.” This section is violated if the rejection “is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 15 USPQ2d 1333 (Fed. Cir. 1990). This policy is captured in the Manual of Patent Examining Procedure. For example, MPEP § 706 states that “[t]he goal of examination is to clearly articulate any rejection early in the prosecution process so that applicant has the opportunity to provide evidence of patentability and otherwise respond completely at the earliest opportunity.” Furthermore, MPEP § 706.02(j) indicates that: “[i]t is important for an examiner to properly

communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to respond.” Unfortunately, the Examiner’s only discussion of the claim feature of “instructing, in response to the query, the switch to terminate the call without incurring a local access charge for the call assessable by a local carrier capable of terminating the call” is a vague reference to a seemingly irrelevant passages ([0023] and [0031]).

As regards the obviousness rejection, it is established above that *Bergman et al.* is devoid, in part, of the claim features of “instructing, in response to the query, the switch to terminate the call without incurring a local access charge for the call assessable by a local carrier capable of terminating the call” or “receiving the call destined for a station directly reachable by the interexchange carrier network” and “receiving a response to the query from the call processor, the response containing the routing information for selectively bypassing a local exchange carrier network serving the station.” To the extent that the Examiner is taking Official Notice of such features, pursuant to the MPEP § 2144.03, Applicants respectfully traverse the Official Notice and request the Examiner to produce references showing the claim features or withdraw the rejection as factually inadequate.

Furthermore, Applicants respectfully disagree with the Examiner’s conclusion that “[t]o have included any other of the other types of toll free lines, i.e., DAL, wireless, or cable, is deemed obvious.” (page 3 of the Office Action). The Administrative Procedure Act requires the Patent Office to articulate and place on the record the “common knowledge” used to negate patentability. This expedient statement fall short of this requirement. Such a conclusory statement, premised on common knowledge and common sense, fail to fulfill requirements of the Administrative Procedure Act, *In re Sang Su Lee*, No. 00-1158 (Fed. Cir., Jan. 18, 2002), and that deficiencies of the cited references cannot be remedied by general conclusions about what is “deemed obvious.” *In re Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697.

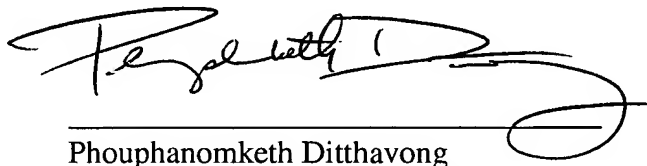
In view of the foregoing, the obviousness rejection is unsustainable.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 425-8508 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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1/5/05
Date



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